

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matters of)

JAMES A. KAY, JR.)

WT Docket No. 94-147

Licensee of One Hundred Fifty Two Part 90)

Licenses in the Los Angeles, California Area)

MARC SOBEL AND MARC SOBEL)

D/B/A AIR WAVE COMMUNICATIONS)

WT Docket No. 97-56

Licensee of Certain Part 90 Licenses)

in the Los Angeles, California Area)

MOTION FOR LEAVE TO SUBMIT REPLY

James A. Kay, Jr. ("Kay") and Marc D. Sobel ("Sobel") (jointly, "Petitioners"), by their attorneys, hereby respectfully move the Commission for leave to submit a reply to the *Enforcement Bureau's Opposition to Motion for Stay* ("Stay Opposition") filed on September 1, 2005, in response to Petitioners' August 23, 2005, *Motion for Stay Pending Action on Motion to Modify* ("Motion for Stay").

Petitioners filed their reply pleading on September 7, 2005. It has since come to their attention that the pleading may be considered technically unauthorized. Any failure to conform to applicable procedural rules was unintentional. Accordingly, to the extent the reply is proscribed by Section 1.45(d) of the Commission's Rules and Regulations, 47 C.F.R. § 1.45(d), Petitioners nonetheless seek leave to file it and ask the Commission to consider it.

The *Motion for Stay* seeks a temporary stay of effectiveness of the license revocation sanctions imposed in the above-captioned proceeding pending consideration of Petitioners' *Motion to Modify Sanctions* ("Motion to Modify"). This is a matter presenting important public interest and policy questions. The Enforcement Bureau itself has stated that the *Motion to Modify*

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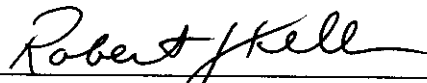
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“presents complex policy issues.” It is important that the Commission have a complete record and be fully briefed. Strict application of Section 1.45(d) would be at odds with that objective.

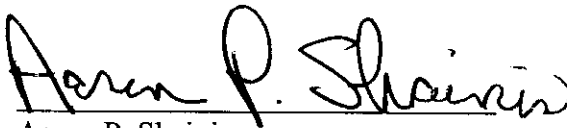
Even if Section 1.45(d) is applicable insofar as the question of stay itself is concerned, the reply pleading also relates directly to issues in the underlying *Motion to Modify*. It will be recalled that after the Enforcement Bureau first requested a 40 day extension of time in which to respond to the *Motion to Modify*, it then unexpectedly withdrew the extension request stating that it would not be filing an opposition. In its *Stay Opposition*, however, the Enforcement Bureau did not veil its opposition to the sanctions modification proposal, advancing arguments that went transcended the question of stay went to the underlying merits of the *Motion to Modify*. Whether intentional or not, the Enforcement Bureau’s *Stay Opposition* served as a sort of surrogate opposition to the *Motion to Modify*. Accordingly, insofar as Petitioners’ reply pleading addresses those merits, it should be considered, regardless of the applicability of Section 1.45(d) of the Rules. *AT&T Corp.*, 16 FCC Rcd 13636, 16638 & n.11 (2001) (Commission considered a reply to an opposition to a stay motion, notwithstanding Section 1.45(d), because the pleading included arguments bearing on the underlying petition for reconsideration).

For all of the foregoing reasons, and because no party would be prejudiced thereby, Petitioners respectfully ask that the Commission receive and consider their September 7, 2005, *Reply to Opposition to Motion for Stay*.

Respectfully submitted:

By: 
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Counsel for James A. Kay, Jr., and
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Dated: September 16, 2005

Certificate of Service

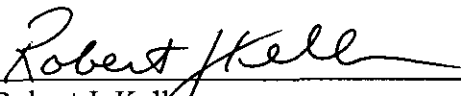
I, Robert J. Keller, counsel for James A. Kay, Jr., and Marc Sobel d/b/a Air Wave Communications, hereby certify that on this 16th day of September, 2005, I caused copies of the foregoing *Motion for Leave to Submit Reply* to be served, by electronic mail on the following:

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